

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

BAVARIAN NORDIC A/S and  
ANTON MAYR,

Plaintiffs,  
v.

ACAMBIS INC. and  
ACAMBIS PLC,

Defendants.

C.A. No. 05-614 (SLR)

**DEFENDANTS' PROPOSED VERDICT FORM**

**A. Conversion**

1. Do you find that plaintiffs Bavarian Nordic and Anton Mayr have proven, by a preponderance of the evidence, that defendants intentionally converted property owned by one of the plaintiffs?

\_\_\_\_\_ yes                      \_\_\_\_\_ no

*If you answer "yes" to question 1, you must continue on to question 2. If you "no" to question 1, you must move to question 9 and skip questions 2 through 8.*

2. What do you find is the converted property? \_\_\_\_\_ (indicate which letter here)

- a. The right to commercialize the MVA viruses;
- b. The vials of MVA 572 sent to NIH; or
- c. The vials of MVA 577 sent to Acambis.

*If you answer a, "the right to commercialize the MVA viruses," you must move to question 9 and skip questions 3 through 8. If you answered either b, "the vials of MVA 572 sent to NIH," or c, "the vials of MVA 577 sent to Acambis," you must continue on to question 3.*

3. Who do you find owned this converted property at the time of conversion? \_\_\_\_\_

(indicate which letter here)

a. Plaintiff Bavarian Nordic; or

b. Plaintiff Anton Mayr.

*If you answer a, "plaintiff Anton Mayr," you must move onto question 9 and skip questions 4 through 8. If you answer b, "plaintiff Bavarian Nordic" you must continue on to question 4.*

4. Do you find that plaintiffs unreasonably delayed in bringing this lawsuit and that this delay has prejudiced defendants?

           yes                                 no

*If you answer “yes” to question 4, you must move to question 9 and skip questions 5 through 8. If you answer “no” to question 4, you must continue on to question 5.*

5. Do you find that plaintiffs acted with unclean hands?

           yes            no

*If you answer “yes” to question 5, you must move to question 9 and skip questions 6 through 8. If you answer “no” to question 5, you must continue on to question 6.*

6. What do you find was the value of the converted property at the time of conversion?

\$\_\_\_\_\_

7. Do you find that plaintiffs should be awarded punitive damages?

\_\_\_\_\_ yes \_\_\_\_\_ no

*If you answer “no” to question 7, you must move to question 9 and skip question 8. If you answer “yes” to question 7, you must continue on to question 8.*

8. What is the amount of punitive damages that you award?

\$ \_\_\_\_\_

**B. Deceptive Trade Practices**

9. Do you find that plaintiff Bavarian Nordic has proven, by a preponderance of the evidence, that defendants caused likelihood of confusion or of misunderstanding concerning MVA3000 and its affiliation, connection, or association with, or certification by, another in violation of Delaware's Deceptive Trade Practices Act?

\_\_\_\_\_yes

\_\_\_\_\_no

10. Do you find that plaintiff Bavarian Nordic has proven, by a preponderance of the evidence, that defendants represented that MVA30000 has a sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that it does not have in violation of Delaware's Deceptive Trade Practices Act?

\_\_\_\_\_yes

\_\_\_\_\_no

11. Do you find that plaintiff Bavarian Nordic has proven, by a preponderance of the evidence, that defendants represented that MVA3000 is of a particular standard, quality, or grade in violation of Delaware's Deceptive Trade Practices Act?

\_\_\_\_\_yes

\_\_\_\_\_no

12. Do you find that plaintiff Bavarian Nordic has proven, by a preponderance of the evidence, that defendants disparaged plaintiff Bavarian Nordic's MVA-BN vaccine by false or misleading representation of fact in violation of Delaware's Deceptive Trade Practices Act?

\_\_\_\_yes

\_\_\_\_no

**C. Unfair Competition**

13. Do you find that plaintiff Bavarian Nordic has proven, by a preponderance of the evidence, that defendants engaged in unfair competition in violation of the Lanham Act?

\_\_\_\_yes

\_\_\_\_no

*If you answer "yes" to question 13, you must answer questions 14 through 19. If you answer "no" to question 11 you must sign and date the verdict form, skipping questions 14 through 19.*

14. Do you find that plaintiff Bavarian Nordic has proven, by a preponderance of the evidence, that defendants misrepresented the origin of the MVA3000 vaccine?

\_\_\_\_yes

\_\_\_\_no

15. Do you find that plaintiff Bavarian Nordic has proven, by a preponderance of the evidence, that defendants made literally false statements to the U.S. Government regarding the MVA3000 vaccine?

\_\_\_\_yes

\_\_\_\_no

16. Do you find that plaintiff Bavarian Nordic has proven, by a preponderance of the evidence, that defendants made deceptive statements to the U.S. Government concerning MVA3000 that actually confused the U.S. Government?

\_\_\_\_\_yes

\_\_\_\_\_no

17. Do you find that plaintiffs unreasonably delayed in bringing this lawsuit and that this delay has prejudiced defendants?

\_\_\_\_\_ yes

\_\_\_\_\_ no

*If you answer "yes" to question 17, you must sign and date the verdict form, skipping questions 18 and 19. If you answer "no" to question 17, you must continue to question 18.*

18. Do you find that plaintiffs acted with unclean hands?

\_\_\_\_\_ yes

\_\_\_\_\_ no

*If you answer "yes" to question 18, you must sign and date the verdict form, skipping question 19. If you answer "no" to question 18, you must continue to question 19.*

19. What do you find were defendants' net profits arising out of their violation of the unfair competition in violation Lanham Act?

\$ \_\_\_\_\_

Each juror must sign the verdict form to reflect that a unanimous verdict has been reached.

Dated: \_\_\_\_\_, 2007

\_\_\_\_\_  
Foreperson

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

	MORRIS, NICHOLS, ARSHT & TUNNELL LLP  <i>/s/ James W. Parrett, Jr. (#4292)</i>  Mary B. Graham (#2256) Rodger D. Smith II (#3778) James W. Parrett, Jr. (#4292) 1201 North Market Street P.O. Box 1347 Wilmington, DE 19899 302.658.9200
OF COUNSEL:  William D. Coston Jeffrey A. Dunn Martin L. Saad Tamany J. Vinson Bentz VENABLE, LLP 575 7 <sup>th</sup> Street, NW Washington, DC 20004-1601 202.344.4000	<i>Attorneys for Acambis Inc. and Acambis plc</i>

Dated: May 4, 2007

820452